

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TWENTY-FIVE

Indianapolis, IN

RYDER SYSTEMS, INC., d/b/a
RYDER INTEGRATED LOGISTICS,¹

and

Case 25-RC-10123

REGION 3, INTERNATIONAL UNION,
UNITED AUTOMOBILE, AEROSPACE
AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, UAW

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held on July 3, 2002, before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board, to determine an appropriate unit for collective bargaining.²

I. ISSUE

Region 3 of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW (herein called the "Petitioner") seeks an election within a standard production and maintenance unit of employees employed by Ryder Systems, Inc. d/b/a

¹ The name of the Employer appears as stipulated at hearing.

² Upon the entire record in this proceeding, the undersigned finds:

- a. The hearing officer's rulings made at the hearing are free from error and are hereby affirmed.
- b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
- c. The labor organization involved claims to represent certain employees of the Employer.
- d. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

Ryder Integrated Logistics (herein called the “Employer”) at its Plainfield, Indiana distribution center. At hearing the parties stipulated that the composition of the unit found appropriate herein, is indeed appropriate. In dispute is one issue: whether the current unit constitutes a substantial and representative complement of the unit which the Employer envisions when the center is fully staffed. The Employer contends that the petition should be dismissed or held in abeyance, on grounds that it is premature since the Employer's facility is not yet fully staffed and two new job classifications will be created within the near future. The Petitioner contends that the current unit of employees constitutes a substantial and representative complement of the unit as it will exist in the future.

II. DECISION

For the reasons discussed in detail below, it is concluded that the petitioned unit of employees constitutes a substantial and representative complement of the Employer's future work force, and therefore, an election at this time is appropriate.

The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time hourly production and maintenance employees, shipping, receiving, and yard employees, including all light assembly employees, material handlers, turret drivers, drivers/switchers, inventory control employees, trainers and coordinators, and plant clerical employees employed by the Employer at its Plainfield, Indiana facility, but excluding all office clerical employees, all temporary employees, all team leaders, all professional employees, guards and supervisors as defined in the Act.³

The unit found appropriate herein consists of approximately 211 employees for whom no history of collective bargaining exists.

A. Statement of Facts

At its Plainfield distribution center the Employer packages, warehouses and distributes replacement appliance parts for the Whirlpool Corporation. In approximately July of 2001, the

³ At hearing the Employer urged that the street address of its distribution center be included in the unit's description, apparently based upon a belief that such an address would preclude the Petitioner from successfully accreting additional employees to the unit, should the Employer construct a second distribution center in Plainfield, or enlarge the existing one. The Board does not typically include street addresses in unit descriptions, nor would the inclusion of an address either bolster or diminish either party's position should an accretion issue arise in the future.

Employer entered into a contract with Whirlpool whereby the warehousing, packaging and distribution functions formerly performed at four of Whirlpool's warehouses (located in Lafayette, LaPorte, and Michigan City, Indiana as well as Benton Harbor, Michigan) were consolidated into a single distribution center in Plainfield which would be managed and operated by Ryder. The transfer of functions performed by these four centers was completed in late June of this year, and the Plainfield center is now fully operational. The distribution center consists of an administrative office area and an 804,000 square-foot warehouse where two primary functions are performed. One function involves the receipt of unpackaged appliance parts (referred to as "unfinished" parts) from the Whirlpool Corporation and its suppliers. Warehouse employees package these parts; label them; and place them in appropriate locations for storage in the warehouse.⁴ Unfinished products are placed in polyurethane bags or boxes; labeled with a decal and a bar code; and transported to an area for storage. Its second function involves the receipt and processing of orders from wholesale and retail customers for replacement parts. Employees pick parts from warehouse storage areas to fill orders; then package and ship them to the customers.

The Employer currently employs approximately 211 full-time employees and 273 temporary employees who have been provided by an employment agency. These employees work in six departments: Packaging, Picking, Receiving, Shipping, Maintenance, and Inventory Control/Quality Control Department. The Employer operates three shifts. Approximately 117 full-time employees work on first shift whose hours are from 6:30 AM to 3:00 PM; 76 on second shift (whose hours are 3:30 PM to midnight); 14 on third shift (whose hours are 10:00 PM to 6:30 AM); and 4 on a shift which works Tuesday through Saturday. The center is overseen by a Facility Manager who is responsible for its day-to-day operations and who is the highest ranking member of management on site. Unit employees are directly supervised by team leaders who the parties have stipulated are statutory supervisors since they possess the power to hire and fire.

B. Discussion

The Employer asserts that the petitioned unit of employees is not a substantial and representative complement of its future workforce and therefore, the petition should be dismissed or held in abeyance. In support of its assertion, the Employer produced only one witness, its Director of Customer Logistics whose office is located in Illinois. He testified that the Employer plans to increase the number of full-time employees from 211 employees to between 340 and 350, and it intends to create two new job classifications: that of trainer and coordinator. According to the witness, these additions "should occur" within the next three months. According to the Director of Customer Logistics, newly hired full-time employees will be recruited from the ranks of temporary employees, and all new hires, whether or not former temporary employees, will be placed into existing job classifications. The witness also testified that "most" of the additional full-time employees will come from the ranks of existing temporary employees. New members of the bargaining unit will receive the same rates of pay and benefits

⁴ Finished products are parts that the Employer receives which have already been packaged and labeled.

as unit members; work the same number of hours; in the same departments, and under the same supervision as unit members.

According to the Director of Customer Logistics, four to five weeks prior to this hearing the center's Facility Manager requested authorization to create two new classifications: trainer and coordinator. He recommended the creation of 25 trainer and 20 coordinator positions within "the next couple of months." No evidence was placed into the record describing the minimum qualifications of these positions, nor were their job descriptions placed into the record. Thus, little tangible evidence exists concerning these future classifications. Based upon the witness's testimony, all that is known about the trainer position is that trainers will be current employees who will train other employees to perform the functions the trainers are currently performing. The coordinator position is one which will be filled by employees who have performed well in their existing classifications, who have exhibited some leadership qualities; and who will be assigned some additional responsibilities. The parties agreed at hearing that both positions properly belong in the petitioned unit.

In all situations involving expanding units, the Board must balance the competing objectives of providing employees who wish union representation with representation as soon as possible, with that of maximizing employee participation in elections. To resolve this issue, the Board has adopted its "substantial and representative complement" test. Factors used to determine whether the employee complement is sufficiently substantial and representative to order an immediate election in an expanding unit include: (1) the size of the work force at the time of the representation hearing; (2) the size of the employee complement who are eligible to vote; (3) the size of the expected ultimate employee complement; (4) the time expected to elapse before a full work force is present; (5) the rate of expansion, including the timing and size of projected interim hiring increases prior to reaching a full complement; (6) the certainty of expansion; (7) the number of job classifications requiring different skills which are expected to be filled when the ultimate employee complement is reached; and (9) the nature of the industry, Toto Industries, Inc., 323 NLRB 645 (1997).

In applying these factors to the present case, it is concluded that the Employer's present complement of employees is substantial and representative. First, even though the Employer asserts that it plans to increase the number of its full-time employees from 211 to 350 employees and add two new job classifications within the next three months, these assertions are speculative and unsubstantiated. No documentary or testimonial evidence was introduced to corroborate the witness's estimate that full staffing will be achieved in three months, or that its level will reach 340 to 350 employees. That such a substantial increase will suddenly occur is somewhat doubtful in light of other testimony indicating that the size of the work force has remained stable at 211 since February 2002. Although the Employer asserts that most of the full-time positions will be filled from the ranks of existing temporary employees, no corroborating evidence was offered on this issue either. In respect to the creation of two new classifications, no documentary or testimonial evidence was introduced to show corporate approval of the Facility Manager's request for the creation of these positions. No evidence was introduced showing a timetable for their creation, a description of the minimal qualifications for the jobs, or a description of their job duties. At this point in time, therefore, the Employer's expansion plans

appear speculative, and consequently, little evidentiary value is accorded them, Laurel Associates, Inc., 325 NLRB 603, 604 (1998); General Engineering, Inc., 123 NLRB 586 (1959).

Even if one assumes that the Employer's expansion plans will occur as projected, the preponderance of record evidence nonetheless supports the conclusion that the Employer's current workforce is a substantial and representative complement of its future work force. The Employer's current full-time employees constitute at least 60% of its anticipated future work force. New hires will receive the same rates of pay and benefits as unit members; work side by side with them; and work under the same terms and conditions of employment. The skills possessed and functions performed by current employees are substantially the same as those to be performed by future hires, including the trainers and coordinators. Thus, the current work force is representative of the anticipated future one. According to the Director of Logistics, trainers and coordinators will be selected from among current unit members. Since the trainers will be teaching new hires how to perform the functions they now perform, it appears that the only additional skill which may be required of trainers is some degree of teaching ability. The record also indicates that persons in coordinator positions will continue to perform their present duties, but with some unknown additional responsibilities. Because trainers and coordinators will not perform any significantly different functions or possess significantly different skills than those of the current unit members, current job classifications are "representative" of these two prospective classifications, Libbey Glass Division, Owens-Illinois, Inc., 211 NLRB 939, 940 (1974). Since the Plainfield center is fully operational; since at least 60% of its anticipated workforce is currently employed; since virtually all job classifications are filled and the two potential additions will not involve substantially different skills or functions, it is concluded that the petitioned unit is a substantial and representative complement of the Employer's future work force, and an immediate election is therefore appropriate, Yellowstone International Mailing, Inc., 332 NLRB No. 35 (Sept. 27, 2000); Toto Industries, Inc., *supra*.⁵

The Employer's contention that since it intends to fill future full-time openings from among the ranks of current temporary employees, an election at this time will deprive these employees of the opportunity to vote, lacks both an evidentiary and legal basis. Again, whether current temporary employees will become full-time employees at some future date is speculative. No evidence was proffered by the Employer to show the number of temporary employees who will be offered full-time employment; a timetable during which these offerings will occur; or a factual basis for its assertion that many temporary employees will accept full-time positions if offered them. Thus, the record does not support the conclusion that all, most or many of the Employer's current temporary employees will become full-time employees in the near future. Moreover, if the Employer were genuinely concerned about the suffrage rights of its temporary employees, it could have urged their inclusion within the petitioned unit. Yet it specifically agreed to their exclusion.

⁵ It should also be noted that if the Employer's projections that it will be fully staffed within three months are correct, an even greater number of employees will be eligible to vote than at present, since more hires will occur between now and the date of the election.

III. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned, among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees in the unit who are engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period, and their replacements. Those in the unit who are in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are former unit employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Region 3, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW.

IV. NOTICES OF ELECTION

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An Employer shall be deemed to have received copies of the election notices unless it notifies the Regional office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices, Club Demonstration Services, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

V. LIST OF VOTERS

To insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is directed that 2 copies of an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the undersigned within 7 days from the date of this Decision. North Macon Health Care Facility, 315 NLRB 359 (1994). The undersigned shall make this list available to all parties to the election. In order to be

timely filed, such list must be received in Region 25's Office, Room 238, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Indianapolis, Indiana 46204-1577, on or before **July 26, 2002**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

VI. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099-14th Street. N.W., Washington, DC 20570. This request must be received by the Board in Washington by August 2, 2002.

DATED AT Indianapolis, Indiana, this 19th day of July, 2002.

Rik Lineback,
Acting Regional Director
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